

**COMMISSION ON VASAP
QUARTERLY MEETING**

September 17, 2021

Minutes

Attendance:

Commission Members:

Senator Richard H. Stuart, Chairman
Mr. John L. Saunders, Vice Chairman (via phone)
Senator Scott A. Surovell (via phone)
Delegate James A. Leftwich, Jr. (via phone)
Delegate Mark H. Levine (via phone)
Delegate Nancy D. Guy
The Honorable Mary Jane Hall
The Honorable George D. Varoutsos
The Honorable Gino W. Williams
Ms. Pat Eggleston
Ms. Krystal Hulette
Ms. Tara Smith

Absent:

Delegate Don L. Scott, Jr.
Sheriff Stacey A. Kincaid

Commission Staff

Ms. Angela Coleman, Executive Director
Ms. Queenie Bradley
Ms. Rosario Carrasquillo
Ms. Shelby Edwards
Mr. Richard Foy
Mr. Glen Miller
Mr. Christopher Morris
Ms. Charlene Motley
Mr. Richard Phillips

Office of the Attorney General

Ms. Janet Baugh

Others Present

Mr. David Hites
Ms. Cynthia Hites

Time and Place

The quarterly meeting of the Commission on Virginia Alcohol Safety Action Program (VASAP) was conducted in person at the Virginia Crossings Hotel and via electronic communication in accordance with the Virginia Freedom of Information Act, § 2.2-3708.2, Section 3, on September 17, 2021 at 10:00 a.m.

After Ms. Coleman called the role, Senator Stuart welcomed everyone. He recognized the three new members of the Commission: Delegate Nancy Guy, Ms. Tara Smith, and Ms. Krystal Hullette. Senator Stuart also expressed his appreciation to Ms. Robyn Allen and Mr. Anthony Carmichael for their previous service as Commission members.

Approval of the Minutes

Judge Williams moved that the minutes from the June 4, 2021 Commission meeting be approved. The motion was properly seconded by Judge Hall. All were in favor; none opposed.

Certification Report – Rappahannock Area ASAP

Ms. Motley provided a report on the status of the Rappahannock Area ASAP. Ms. Motley reported that since the last Commission meeting, when the Rappahannock Area ASAP was conditionally certified, the program has shown improvement with regard to monitoring ignition interlock cases; however, there were deficiencies still found in four areas during a recent follow-up review: (1) offender intakes were not being conducted within the required 30 days, (2) court-referred offenders were not being contacted after they failed to show up for enrollment, (3) cases were not being properly monitored and documented in the case management system, and (4) an unapproved intake questionnaire was being used that required offenders to reveal their full social security numbers. The first and third aforementioned deficiencies listed were cited in the original certification report in April. The director of the Rappahannock Area ASAP has since removed the unapproved questionnaire and replaced it with a Commission-approved version.

To assist the Rappahannock Area ASAP with coming into full compliance, the Commission on VASAP will be conducting mandatory virtual training for all of the Rappahannock Area ASAP's staff, focusing on identified areas of deficiency and other general ASAP processes. While it is recommended at this time that the Rappahannock Area ASAP remain in a conditionally certified status, it is hoped that by the December Commission meeting, full certification status can be recommended.

Judge Williams moved, and Senator Surovell seconded, that the Rappahannock Area ASAP continue to be conditionally certified to operate until the December Commission meeting. All were in favor; none opposed.

Ignition Interlock and Remote Alcohol Monitoring

Mr. Morris reported that the Commonwealth has a new remote alcohol monitoring law that went into effect on July 1, 2021. He stated that the rollout of this program has been slow, gradual and methodical as the courts and vendors gain knowledge and experience in the state. VASAP and DMV have a process in place for handling the few deferred disposition cases received thus far.

The number of ignition interlock installations has now surpassed pre-pandemic numbers with approximately 8,000 units in operation.

Executive Director's Report

New Staff Member

Ms. Coleman introduced Mr. Glen Miller, VASAP's new IT Specialist, to the Commission members. Ms. Coleman stated that Mr. Miller has already been an asset to the Commission and local ASAPs, installing equipment, troubleshooting and finding ways to reduce costs. He comes to the Commission with a wealth of experience in both the public and private sectors.

Financial Audit

Ms. Coleman directed the Commission members to a required statement that is sent out each year to advise the Commission, general assembly and other state agencies that the Commission office is undergoing an annual fiscal audit. The audit commenced on September 16, 2021 and is expected to be completed by October 30, 2021.

John Tyler ASAP and Old Dominion ASAP Certification

Ms. Coleman stated that she wanted to personally report on the status of John Tyler ASAP and Old Dominion ASAP due to their extenuating circumstances.

The Commission on VASAP has operated the John Tyler ASAP since June 4, 2021. There was a turnover of almost the entire staff at the ASAP during the past three months, resulting in a large number of offender cases that needed to be reviewed. At this time, the ASAP is once again fully staffed. Commission staff have met with several judges from the Chesterfield County and Henrico County courts, and they have already noted improvement in ASAP services. Ms. Coleman noted that John Tyler ASAP is a large program with offices in two locations, so there is still a lot of progress to be made. Ms. Coleman advised that she meet with the John Tyler ASAP policy board on September 16, 2021 to update them. The policy board intends to advertise for a new ASAP director soon.

Old Dominion ASAP has been without their interim director for several weeks due to the illness of the director's husband who recently passed away. Ms. Coleman expressed the Commission's condolences to the interim director, Ms. Patricia Lowery. Due to these personal circumstances, Ms. Lowery was unable to fully implement the corrective action plan she presented to the Commission at the June 4, 2021 meeting.

Ms. Coleman recommended that the certifications of the John Tyler ASAP and the Old Dominion ASAP be extended until the December Commission meeting. Judge Williams moved to extend the certification of these ASAPs. The motion was seconded by Mr. Saunders. All were in favor; none opposed.

VASAP Directors' Association (VASAPDA) Report

Ms. Hulette presented the VASAPDA report. She stated that the next VASAPDA meeting is scheduled to be held in Charlottesville on October 15, 2021. During the meeting, the directors will be working on developing a uniform policy for the transferring of offender cases, establishing a method for providing the Reckless and Aggressive Driving Program to all jurisdictions, and identifying procedures for the efficient scanning of documents into the Eginuity case management system.

Petition #343

Mr. Foy summarized the petition for the Commission members. The petitioner, Ms. Cynthia Hites, was requesting that 24VAC35-30-150 be amended to require the Commission on VASAP to collect extensive ignition interlock data. Mr. Foy stated that the vast amount of data requested by the petitioner would require the use of the extensive resources of multiple agencies such as the Commission on VASAP, local ASAPs, the Department of Motor Vehicles and the courts, as well as require additional spending of state tax dollars. Collecting this data would also require extensive work by agencies that are already understaffed.

Senator Stuart suggested that due to the complexity of the issue, the petitioner might be better served by taking the subject up with her delegate or senator so the matter can be considered by the general assembly.

Delegate Levine inquired as to whether the Commission keeps statistics on the number of ignition interlock violations in the state. Mr. Morris stated that while the number of installations and removals are monitored, no records of the number of violations are kept. He added that other states, such as Pennsylvania, do not collect such data due to the difficulty involved. Delegate Levine also asked if there is any way to determine an ignition interlock failure rate (percentage of false positives). Mr. Morris replied that he did not know how this could be accomplished, given the different procedures of the various courts in the Commonwealth. He stated that the general procedure whenever a potential violation occurs is to first contact the

offenders for their explanation about the event. Virginia has some of the strictest calibration standards in the country for its ignition interlock devices. The devices are calibrated at every monthly appointment to ensure the device was functioning properly at the time of a violation. Also, the state VASAP office conducts a secondary review of all positive ignition interlock tests in the 0.02-0.04 BAC range to ensure that the data is indicative of alcohol consumption. Mr. Morris stated that the Commission staff has conducted tests with products containing alcohol such as windshield wiper fluid and hand sanitizer to gain an understanding of the type of data pattern potentially produced by these interferences. He also noted that whenever drivers have a positive BAC, they are afforded the opportunity to submit another test within 15-minutes to demonstrate that they were not drinking.

Delegate Guy asked about the petitioner's assertion that there are 200 failed ignition interlock tests per day. She asked if this figure was accurate. Mr. Morris replied that he had no idea where that number came from since the Commission does not track the number of violations.

Senator Surovell noted that the ignition interlock devices used in the Commonwealth meet the specification standards recommended by the National Highway Traffic Administration. He added that while he was sympathetic to the petitioner's goal of ensuring that ignition interlocks not produce false readings, he believed that making regulatory changes was probably not the best approach.

Senator Surovell moved to deny Petition #343. Judge Hall seconded the motion. All were in favor; none opposed.

After the conclusion of the consideration of the petition, Judge Hall stated that she always wants to assume the good faith of people making a request of the Commission, even if she disagrees with them. In this case, however, the petitioner has accused VASAP of being a "criminal enterprise," alleging "VASAP has zero integrity," and stating that "the VASAP staff is adept at covering up crime, and the spineless Commissioners are adept at being spoon fed manure with no complaint." Judge Hall expressed her displeasure at these remarks which she considered to be scurrilous allegations with no factual support. She added that persons who are acting in good

faith to produce good outcomes are best advised to refrain from launching such personal and highly insulting slurs against persons involved in the process. Senator Stuart stated that he thought everyone would agree with that.

Meeting Dates

The final Commission meeting will be conducted on December 10th. It is tentatively scheduled to be conducted at the Virginia Crossings Hotel since the Capitol Building remains closed for meetings at this time. The December Commission meeting will be moved back to the Capitol Building if it is reopened in sufficient time to facilitate the change and there is availability.

Adjournment

Judge Williams moved that the meeting be adjourned; Judge Hall seconded. All were in favor; none opposed. There being no further business, Senator Stuart adjourned the meeting.